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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/039,283

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Douglas P. Brown

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01/27/2005

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EXAMINER

ALAM, SHAHID AL

ART UNIT

PAPER NUMBER

2162

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicati n No.	Applicant(s)	
	10/039,283	BROWN ET AL.	
	Examiner	Art Unit	
	Shahid Al Alam	2162	

-- The MAILING DATE of this c mmunication appears n th cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Claims 1 – 33 are pending in this Office action.
2. Applicant's arguments filed on August 9, 2004 have been fully considered but they are not persuasive for the following reasons.

Applicant argues that explicit claiming of a "computer" is not necessary in these claims and referred to the MPEP quotation; a *prima facie* case of obviousness has not been established with respect to the claim; a person of ordinary skill in the art would not have been motivated the teachings of Carino and Fitting to achieve the claimed invention; and the cited passage do not teach the claimed limitation.

Examiner respectfully disagrees the entire allegation as argued.

Claim 1 recites a method rather than a computer-implemented method. Claim does not indicate use of hardware on which the software runs to perform the steps recited in the body of the claim. Software or program can be stored on a medium and/or executed by a computer. In other words the software must be computer-readable. The use of a computer is not evident in the claim. MPEP 2106.IV.B.1(a) refers to "computer-readable" medium with computer program encoded on it."

In response to applicant's argument on page 8, a *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. Once such a case is established, it is incumbent upon appellant to go forward with objective evidence of unobviousness. In re Fielder, 471 F.2d 640, 176 USPQ 300 (CCPA 1973).

Examiner is entitled to give claim limitations their broadest reasonable interpretation in light of the specification. During patent examination, the pending claims must be 'given the broadest reasonable interpretation consistent with the specification.' Applicant always has the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 162 USPQ 541,550-51 (CCPA 1969).

In response to applicant's argument that there is no suggestion to combine the references (a person of ordinary skill in the art would not have been motivated the teachings of Carino and Fitting to achieve the claimed invention), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to a person of ordinary skill in the art at the time of the invention was made to combine the teaching of Fitting with Carino to permit bi-directional messaging between a test system and a database so as to allow the test system to retrieve product information, such as model number, from the database in substantially real-time and thereby, eliminating the need for information redundancy in the manufacturing system (column 1, lines 54 – 60; Fitting).

Carino's teaching of a multimedia relational database and a multimedia object server clearly teaches applicant's target database environment. An optimal plan is determined by collecting statistical information for UDFs that operate on objects that have large variance with respect to execution time and/or storage resources teaches random sample statistics (see columns 12 and 18). Carino's teaching of SQL query optimization and SQL queries as in column 14 – 18 clearly teach applicant's SQL Diagnostic statement as claimed. SQL optimizers use cost estimation or sampling to optimize queries. Sampling implies running a random instance of every UDF in the query and using this information to generate an efficient query plan.

For the above reasons, Examiner believed that rejection of the last Office action was proper.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

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not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 – 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,067,542 issued to Felipe Carino (“Carino”) and in view of U.S. Patent Number 5,857,192 issued to Samuel Fitting (Fitting”).

With respect to claim 1, Carino teaches importing environment information of a target database system (column 3, lines 28 – 62), the environment information comprising random sample statistics of the target database system (column 14, lines 58 – column 15, line 9);

storing the random sample statistics in a storage location (column 3, lines 41 – 49 and column 18, lines 32 – 35); and

using the random sample statistics in performing query plan analysis for a given query in the test system (column 3, lines 41 – 49 and column 18, lines 32 – 35).

Carino does not explicitly teach importing information into a test system as claimed.

Fitting discloses claimed test system, where to retrieve information about product from the database, the controller of test system creates a request file and communicates it to the shared file directory of the shared resource manager (SRM) (see column 4, lines 16 – 26, see also abstract, column 1, lines 14 – 22, column 2, lines 6 – 18; Fitting).

It would have been obvious to a person of ordinary skill in the art at the time of the invention was made to combine Fitting with Carino to permit bi-directional

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messaging between a test system and a database so as to allow the test system to retrieve product information, such as model number, from the database in substantially real-time and thereby, eliminating the need for information redundancy in the manufacturing system (column 1, lines 54 – 60; Fitting).

As to claim 2, importing the random sample statistics from a selected segment of the target database system (column 3, lines 28 – 62 and column 14, line 58 – column 15, line 9; Carino).

As to claim 3, the target database system comprises plural access modules, wherein importing the random sample; statistics comprises importing the random sample statistics associated with less than all of the access modules (column 7, lines 56 – 60; Carino).

As to claim 4, importing the random sample statistics associated with a randomly selected one or randomly selected ones of the access modules (column 16, lines 19 – 22; Carino).

As to claim 5, importing at least some of the following information: database name, base table name, number of rows in the base table, number of indexes for the base table, minimum row length in the base table, maximum row length in the base table, secondary index name, number of rows in a secondary index table, and average row size of the secondary index table (column 16, lines 15 – 50; Carino).

As to claim 6, importing the environment information of a target database system having plural access modules that manage concurrent access of plural portions of data stored in the target database system (column 2, lines 21 – 31; Carino).

As to claim 7, importing information pertaining to a configuration of the target database system (column 15, lines 6 – 9: Carino).

As to claim 8, importing cost-related information of the target database system (column 15, lines 3 – 9: Carino).

As to claim 9, importing the cost-related information comprises importing information comprising at least some of the following: number of nodes in the target database system, number of CPUs per node, number of access modules per node, an amount of memory allocated per access module, disk access speed, and network access speed (see Figure 3 and column 15, lines 3 – 9; Carino).

As to claim 10, emulating an environment of the target database system using the random sample statistics, wherein performing the query plan analysis comprises performing the query plan analysis in the emulated environment (column 18, lines 9 – 31; see also column 12, lines 24 – 34; Carino).

As to claim 11, emulating the environment at one of plural emulation levels, the plural emulation levels comprising a system level and a user session level (column 18, lines 9 – 31; see also column 12, lines 24 – 34; column 16, lines 8 – 42 and column 17, lines 1 – 25; Carino).

As to claim 12, generating a full set of statistics from the random sample statistics column 15, lines 3 – 20; Carino).

As to claim 13, invoking an optimizer to use the full set of statistics to perform the query plan analysis (column 3, lines 41 – 49; Carino).

As to claim 14, using an SQL DIAGNOSTIC statement to identify random sample statistics to capture (column 14, lines 53 – 59; Carino).

As to claim 15, using another SQL DIAGNOSTIC statement to set random sample statistics in the storage location (column 14, lines 53 – 59; Carino).

Claims 16 – 22 and 32 are essentially the same as claims 1 – 15 except that it set forth the claimed invention as a test system rather than a method and rejected for the same reasons as applied hereinabove.

Claims 23 – 31 and 33 are essentially the same as claims 1 – 15 except that it set forth the claimed invention as an article rather than a method and rejected for the same reasons as applied hereinabove.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shahid Al Alam
Primary Examiner
Art Unit 2162

19 January 2005